IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.Nos.4022 to 4024 of 2003 and 213 & 214 of 2004
and
W.A.M.P.Nos.6617 & 6618 of 2003 and 334 to 337 of 2004

G.Ganesan ..Appellant in W.A.No.4022/2003

J.Lakshmi Praba ..Appellant in W.A.No.4023/2003

K.Pugazenthi ..Appellant in W.A.No.4024/2003

V.Rajaram ..Appellant in W.A.No.213/2004

S.Subramanian ..Appellant in W.A.No.214/2004

Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary,
Housing and Urban Development Dept.,
Fort St.George,
Chennai - 9.

2. The Chairman and Managing Director,
TNHB, 331, Anna Salai, Nandanam,
Chennai - 31.

3. The Chief Engineer,
TNHB, 331, Anna Salai, Nandanam,
Chennai - 31.

4. The Superintending Engineer,
TNHB, Vellore Circle, Vellore - 9.

..Respondents 1 to 4 in all appeals

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5. The Executive Engineer and Administrative Officer,
TNHB, Thiruvannamalai Division, Thiruvannamalai.

..5th Respondent in
W.As.4022/03
& 213 & 214 of 2004.

6. The Executive Engineer and Administrative Officer,
TNHB, Vellore Housing Unit, Vellore.

..5th Respondent in W.A.4023/03
& 4024/03.

PRAYER: Writ Appeals filed against the common order dated 4.7.2003 in In W.P.Nos.18479, 18483, 18480, 18482, 18481 of 2003 on the file of this Court.

For Appellant in all the Appeals :: Mr.S.James

For Respondents in all the Appeals :: Mr.D.Veerasekaran
for R2 to R5
Mr.V.Raghupathy, GP for R1

J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

The writ appeals have been filed against the judgment of the learned single Judge dated 04.07.2003 in W.P.Nos.18479 to 18483 of 2003.

2. We heard learned counsel for the appellants and we find no merit in these appeals.

3. The facts in detail have been set out in the judgment of the learned single Judge, and hence, we are not repeating the same, except those which are necessary.

4. It appears that the appellants were appointed in the service of Tamil Nadu Housing Board in 1989 on daily wages basis. They filed W.P.Nos.8175 to 8179 of 2001 seeking regularization of their service. This Court, by order dated 10.03.2003, directed the second respondent, the Chairman & Managing Director, TNHB to consider their representations and accordingly, their

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representations were considered and rejected by the following order dated 09.06.2003:-

> "The Board resolved the following after detailed discussion:
>
> Considering that there are no construction activity at present in Tamil Nadu Housing Board and taking into consideration the reduction of staff, the request of the petitioners was examined in depth on the above analogy. The Board is of the considered view not to accede to the request of the petitioners' representation dated 03.08.2000 and accordingly reject it."

5. A perusal of the above order shows that the representation of the appellants was rejected because of reduction of staff in the Housing Board. In our opinion, the ground given for rejecting the representation, namely, reduction in staff, was a valid and reasonable one.

6. It is well settled that regularisation of service depends on the Service Rules and there is no right to get regularization unless provided for in the Rules.

7. The appellants being temporary appointees have no right to continue in service, vide State of U.P. & Another Vs. Kaushal Kishore Shukla, (1991) 1 SCC 691; Triveni Shankar Saxena Vs. State of U.P., AIR 1992 SC 496 (vide para 26) etc. A daily wage employee is only a temporary employee, and hence has no right to the post.

8. In E.Ramakrishnan and Others Vs. The State of Kerala and Others JT 1996 (9) SC 286 and Union of India Vs. Bishamber Dutt, JT 1996 (1) SC 329 the Supreme Court observed that where an appointment was not on regular basis the Government cannot take any decision contrary to the Constitution to regularize the service of candidates de hors the recruitment rules and statutory process for selection through the Public Service Commission.

9. In our opinion, regularization can only be made in accordance with the service rules as held by the Supreme Court in State of Haryana and Others Vs. Piara Singh and Others, AIR 1992 SC 2130 and J.K.Public Service Commission Vs. Dr.Narinder Mohan, 1991 (1) SCC 28. Appointments de hors the rules are invalid as they violate public policy as well as Article 16 of the Constitution vide Smt.Ravindra Sharma and Another Vs. State of Punjab and Others, 1995 (1) SCC 138; Smt. Harpal Kaur Chahal Vs. Director, Punjab Instructions, 1995 (Suppl) 4 SCC 706; Bagwan Singh Vs. State of Punjab and Others, 1999 (9) SCC 573; Chancellor Vs. Shankar Rao and Others, 1999 (6) SCC 255, etc.

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10. Recently, a Division Bench of the Allahabad High Court in State of U.P. and Others Vs. U.P.Madhamic Shiksha Parishad Shramik Sangh and Others, 2004 (1) UPLBEC 77 held that for getting regular appointment the candidates have to face a regular selection in accordance with the rules and they cannot be regularized without such selection, otherwise Article 16 of the Constitution will be violated. We agree with this view.

11. In State of Orissa Vs. Sukanti Mohapatra, AIR 1993 SC 1650 the Supreme Court observed that appointment in disregard to the rules cannot be allowed to be regularized merely by invoking the provisions of relaxation. Invoking the power of relaxation in such cases will amount to total suspension of the rules, and regularization of such appointment by relaxation will be illegal.

12. In R.N.Nanjundappa Vs. T.Thimmiah and Another, AIR 1972 SC 1767 (vide para-26) it was observed:-

> "If the appointment itself is in infraction of the rules or of it is in violation of the provisions of the Constitution, the illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with the procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of the rules or it may have the effect of setting at naught the rules."

13. In view of the above, we find no merit in the appeals and the appeals are dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

na/sm

Sd/
Asst.Registrar

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Sub Asst.Registrar

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   The Government of Tamil Nadu,
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+ 1 cc to Mr.S.James Advocate SR 7191

W.A.Nos.4022 to 4024/03
&
W.A.Nos.213 and 214/04

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